IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8844 of 1991

with

SPECIAL CIVIL APPLICATION No 7410 of 1995

For Approval and Signature:

HON'BLE MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BHARATKUMAR VIRCHANDBHAI SOLANKI

Versus

SIDHPUR MUNICIPALITY

Appearance:

1. Special Civil Application No. 8844 of 1991
MISS TEJAL A. VASHI FOR MR JD AJMERA for Petitioner No. 1
MR HARIN P RAVAL for Respondent No. 1 - Absent

2. Special Civil Application No. 7410 of 1995
MISS TEJAL A. VASHI FOR MR PK JANI for Petitioner No. 1
MR HARIN P RAVAL for Respondent No. 1 - Absent

CORAM : HON'BLE MR.JUSTICE R.K.ABICHANDANI

Date of decision: 24/09/2003

ORAL JUDGEMENT

These two petitions are filed by the same petitioner who in Special Civil Application No. 8844 of 1991 had challenged the order dated 20.9.1990 at Annexure-C to the petition terminating his services and in Special Civil Application No. 7410 of 1995 the order dated 3.8.1995 of the Municipality as well as the order dated 2.3.1995 of the Collector by which his services were terminated after he came to be appointed on probation by the order dated 24.2.1994.

2. The order dated 20.9.1990 recorded that it was decided to discharge the daily wager employees from 21.9.1990 and accordingly six employees named therein including the present petitioner were discharged as daily wagers from 20.9.1991 after office hours. It is clear that since the petitioner was a daily wager he could not have claimed regular appointment or regularisation for the period that he worked as a daily wager in the Octroi Department of the Municipality. It appears that the petitioner thereafter came to be appointed by order dated 31.3.1994 passed by the Administrator of the Municipality on probation for a period of one year to the post of Sub-Octroi Clerk in the pay scale of Rs. 950-1400 on the condition that he would withdraw the suit filed by him. Therefore, the acceptance of the fresh appointment as probationer by the petitioner pursuant to the order dated 31.3.1994 clearly implied that he had forgone any claim that he may have put up for being regularised during the earlier period on the basis of his having worked as a daily wager. The claim of the petitioner in Special Civil Application No. 8844 of 1991 that he should be treated continuously in service with full backwages by setting aside the order dated 20.9.1990 discharging him as daily wager is, therefore, wholly misconceived and cannot be sustained.

3. It appears from the record that after appointment on probation by virtue of the order dated 31.3.1994, a copy of which is at Annexure-K to Special Civil Application No. 7410 of 1995 that order came to be cancelled by order dated 2.3.1995 made by the Collector, a copy of which is at Annexure-N to the petition. The order of the petitioner's appointment on probation was cancelled on the ground that the Administrator had not obtained any prior permission before issuing the order of 31.3.1994. The Municipality made a consequential order dated 3.8.1995 and these two orders are challenged in

Special Civil Application No. 7410 of 1995. It is now brought on record by Civil Application No. 7492 of 2001 in Special Civil Application No. 7410 of 1995 that the Government has made orders on 28.12.1995, as stated in the letter of the Municipality dated 22.4.1996, setting aside the order of the Collector dated 2.3.1995 with effect from 31.3.1994. It is stated that the petitioner has been taken back in service in view of the said order of the Government. Therefore, the prayer made in Special Civil Application No. 7410 of 1995 challenging the order of the Collector dated 2.3.1995 and the consequential order of the Municipality dated 3.8.1995 will not now survive in view of the Government order having set aside the order of the Collector pursuant to which the petitioner has been taken back in service.

4. The learned counsel for the petitioner appearing in both these petitions submitted that no orders have been made for making any payment that may be due as a consequence of the cancellation of the order of the Collector. It is clear from the orders made by the Government as reflected from the letter of the Municipality dated 22.4.1996 that the Government set aside the order of the Collector dated 2.3.1995 as a result of which the order of removal of the petitioner from the service did not survive and the petitioner was taken back in service with effect from 31.3.1994 being the date of his appointment on probation as if the cancellation order made by the Collector was never passed. Therefore, the petitioner was to be treated as continuously in service on the basis of the order dated 31.3.1994 and there is no reason to believe that the petitioner would not be paid his consequential benefits on the basis of the order of the State Government and the order made by the Municipality on 22.4.1996 restoring him to service which means he stands restored in the same position to which he was appointed by the order dated 31.3.1994. Needless to say that if any consequential benefit is not yet paid to the petitioner pursuant to the letter of the Sidhpur Municipality reinstating the petitioner to the position of his appointment dated 31.3.1994, the same will have to be paid to him expeditiously. Therefore, Special Civil Application No. 8844 of 1991 stands rejected for the reasons indicated above and Special Civil Application No. 7410 of 1994 is also rejected subject to the directions given hereinabove. Rule is discharged in each of these petitions with no order as to costs.

(R.K. ABICHANDANI, J)

(pkn)